



# Finance Act 2013

## 2013 CHAPTER 29

### PART 1

#### INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

### CHAPTER 5

#### OTHER PROVISIONS

#### *Capital gains*

#### **62 Attribution of gains to members of non-resident companies**

- (1) TCGA 1992 is amended as follows.
- (2) In subsection (4) of section 13 (members to whom rule for attributing gains to members of non-resident companies does not apply), for “one tenth” substitute “one quarter”.
- (3) In subsection (5) of that section (cases where rule for attributing gains to members of non-resident companies does not apply), after the “or” at the end of paragraph (b) insert—
  - “(ca) a chargeable gain accruing on the disposal of an asset used, and used only, for the purposes of economically significant activities carried on by the company wholly or mainly outside the United Kingdom, or
  - (cb) a chargeable gain accruing to the company on a disposal of an asset where it is shown that neither—
    - (i) the disposal of the asset by the company, nor
    - (ii) the acquisition or holding of the asset by the company,formed part of a scheme or arrangements of which the main purpose, or one of the main purposes, was avoidance of liability to capital gains tax or corporation tax, or”.
- (4) After section 13 insert—

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**“13A Section 13(5): interpretation**

- (1) For the purposes of section 13(5)(b) a disposal of an asset is to be regarded as a disposal of an asset used for the purposes of a trade carried on wholly outside the United Kingdom by a company if—
  - (a) the asset is accommodation, or an interest or right in accommodation, which is situated outside the United Kingdom, and
  - (b) the accommodation has for each relevant period been furnished holiday accommodation of which a person has made a commercial letting.
- (2) For the purposes of subsection (1)(b) each of the following is “a relevant period”—
  - (a) the period of 12 months ending with the date of the disposal and each of the two preceding periods of 12 months, or
  - (b) if the company has been the beneficial owner of the accommodation (or interest or right) for a period longer than 36 months, the period of 12 months ending with the date of the disposal and each of the preceding periods of 12 months throughout which the company has been the beneficial owner of the accommodation (or interest or right).
- (3) The reference in subsection (1)(b) to the commercial letting of furnished holiday accommodation is to be read in accordance with Chapter 6 of Part 4 of CTA 2009, but—
  - (a) as if sections 266, 268 and 268A were omitted, and
  - (b) as if, in section 267(1), the reference to an accounting period were a reference to a relevant period as defined by subsection (2) above.
- (4) For the purposes of section 13(5)(ca) activities carried on by a company are “economically significant activities” if they are activities which consist of the provision by the company of goods or services to others on a commercial basis and involve—
  - (a) the use of staff in numbers, and with competence and authority,
  - (b) the use of premises and equipment, and
  - (c) the addition of economic value, by the company, to those to whom the goods or services are provided,
 commensurate with the size and nature of those activities.
- (5) In subsection (4) “staff” means employees, agents or contractors of the company.”
- (5) The amendments made by this section have effect in relation to disposals made on or after 6 April 2012.
- (6) But, in the case of a disposal made on or after that date but before 6 April 2013, a person to whom a part of a chargeable gain or allowable loss would (but for the amendments made by this section) have accrued on the disposal may make an election in writing for section 13 of TCGA 1992 to apply in relation to the disposal without those amendments.
- (7) An election under subsection (6) in respect of a disposal must be made—

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- (a) in the case of a person within the charge to capital gains tax, within 4 years from the end of the tax year in which the disposal was made, and
- (b) in the case of a person within the charge to corporation tax, within 4 years from the end of the accounting period in which the disposal was made.

### **63 Heritage maintenance settlements**

- (1) In section 169D of TCGA 1992 (gifts to settlor-interested settlements etc: exceptions to sections 169B and 169C), in subsection (1), after “elected” insert “, or could have elected,”.
- (2) The amendment made by this section has effect for the tax year 2012-13 and subsequent tax years.

### **64 EMI options and entrepreneurs' relief etc**

Schedule 24 makes provision for capital gains tax purposes in connection with shares acquired under options which are qualifying options under the EMI code.

### **65 Charge on certain high value disposals by companies etc**

Schedule 25 contains provision for a new capital gains tax charge on gains accruing to companies etc on certain high value disposals.

### **66 Currency used in tax calculations: chargeable gains and losses**

- (1) Chapter 4 of Part 2 of CTA 2010 (currency) is amended as follows.
- (2) In section 5 (basic rule: sterling to be used), after subsection (2) insert—
  - “(3) See section 9C for provision about the application of subsection (1) so far as it relates to calculating chargeable gains.”
- (3) After section 9B insert—

#### **“9C Chargeable gains and losses of companies**

- (1) This section applies if—
  - (a) a company disposes of an asset which is a ship, an aircraft, shares or an interest in shares, and
  - (b) at any time beginning with the company's acquisition of the asset (or, if earlier, the time allowable expenditure was first incurred in respect of the asset) and ending with the disposal, the company's relevant currency is not sterling.
- (2) A company's relevant currency at any time is its functional currency at that time, subject to subsection (3).
- (3) If, at any time—
  - (a) a company is a UK resident investment company, and
  - (b) the company has a designated currency (see sections 9A and 9B) which is different from its functional currency,the company's relevant currency at that time is that designated currency.

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- (4) If the relevant currency of the company at the time of the disposal is not sterling, the chargeable gain or loss accruing to the company on the disposal must be calculated as follows—
- Step 1* Calculate the chargeable gain or loss in the relevant currency of the company at the time of the disposal.
- Step 2* Translate the amount of the chargeable gain or loss into sterling by reference to the spot rate of exchange on the day of the disposal.
- (5) In any case, subsections (6) to (10) apply for the purposes of calculating the chargeable gain or loss.
- (6) Where any allowable expenditure is incurred in a currency which is not the company's relevant currency at the time it is incurred, that expenditure is to be translated into that relevant currency by reference to the spot rate of exchange for the day on which it is incurred.
- (7) Where, at any time after any allowable expenditure is incurred but before the asset is disposed of, there is a change in the company's relevant currency, that expenditure is to be translated (or, if it has previously been translated under this section, further translated) into the relevant currency of the company immediately following the change, by reference to the spot rate of exchange for the day of the change.
- (8) Any amount of consideration for the disposal which is given in a currency other than the company's relevant currency is to be translated into that relevant currency by reference to the spot rate of exchange on the day of disposal.
- (9) For the purposes of subsections (6) and (7)—
- (a) any translation of expenditure under subsection (6) is to be done before any translation of the expenditure under subsection (7), and
  - (b) if subsection (7) applies as a result of more than one change in the company's relevant currency, it is to be applied in relation to each change in the order the changes were made (with the earliest first).
- (10) Where, by virtue of any enactment, the company was at any time treated for the purposes of corporation tax on chargeable gains as acquiring the asset—
- (a) for a consideration of such amount as would secure that neither a gain nor a loss would accrue to the person disposing of the asset, or
  - (b) for a consideration equal to the market value of the asset,
- for the purposes of this section that allowable expenditure is treated as incurred by the company at that time.
- (11) For the purposes of this section, a reference to a ship or aircraft includes a reference to the benefit of a contract—
- (a) to which section 67 of CAA 2001 applies, and
  - (b) which relates to plant or machinery which is a ship or aircraft.
- (12) In this section—
- “allowable expenditure” means expenditure which, immediately before the disposal, was attributable to the asset under section 38(1) (a) to (c) of TCGA 1992;
- “interest in shares” has the same meaning as in Schedule 7AC to TCGA 1992 (see paragraph 29 of that Schedule);

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“shares” includes stock.”

- (4) The amendments made by this section come into force in accordance with provision made by the Treasury by order.

**Commencement Information**

- II** [S. 66](#) in force at 1.9.2013 for the purposes of the amendments made by that section, with effect in relation to disposals after that date by [S.I. 2013/1815, art. 2](#)

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